

## Quadrant II - Notes

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**Module Name: Discharge of Contract**

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Like any other contract, contract of insurance gets terminated or discharged under certain circumstances or conditions. This module discusses one such termination, discharge of contract.

### **Discharge or Termination of Contract**

Most of the authors and jurists are of the opinion that, discharge and termination of contract could be used interchangeably. However, it is important to note that, discharge is only one type of termination of contract. There are different ways to bring in termination of contract like death to disability, among these different methods, discharge is one common method of termination of contract.

### **Kinds of Discharge**

#### **1. Discharge by performance.**

Every contract comes with set of duties on both parties. The duties may be continuous or one time. Once the party discharges his duty, the contract comes to an end, as far as his duty is concerned. Whereas, the duty on the other party continues. In case of contract of insurance, the duty of the insured is to pay premium periodically. Once he discharges his duty the corresponding duty falls on the insurer to pay compensation in case of accident. When the accident takes place and insurer makes the payment of compensation, insurer discharge his duty. As both parties perform their duties, the contract gets discharged.

#### **2. Discharge of Contract by Substituted Agreement.**

The contract of insurance can be discharged by substitution. Substitution means replacing the original contract with a new contract. Such substitution is possible under different circumstances.

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When the terms and conditions of the existing contract are replaced with changed terms or new terms and conditions, it is presumed that the earlier agreement through proposal and acceptance are no more valid. The changed terms and conditions need to be approved afresh by the parties. Therefore the earlier contract is presumed to be discharged. This is discharge by novation.

### **3. Discharge by lapse of time.**

This is an interesting discharge where the law plays an important role. The rights and the duties of the parties need to be enforced. Whenever there is breach of terms or conditions, breach needs to be enforced. The enforcement is either by specific performance or through compensation.

The law has a time frame prescribed by The Limitation Act. Once the duration prescribed by the Act expires then, the right to seek remedy dies. Therefore, it is presumed that the contract of insurance is discharged by lapse of time.

Another interpretation of lapse of time would be, discharge of timebound contract due to lapse of time. i.e. if the parties agree on a time limit and the time is over, the contract gets discharged by lapse of time.

### **4. Discharge by operation of law.**

The alteration in contract has to be done in accordance with law. If the changes are introduced unilaterally or without authorization, then such changes or alterations lead to discharge of law by operation of law.

The above example of discharge by lapse of time is also a type of discharge by lapse of time.

### **5. Discharge by Impossibility of Performance.**

The duties under the contract becomes impossible to perform, then the parties can take the excuse and discharge the contract. The advantage of discharge is, the neither parties are liable to pay compensation.

However the impossibility to perform comes with three important conditions not firstly the impossibility is caused by neither of the parties. Secondly, this impossibility should be remote and could not be foreseen by the parties under ordinary circumstances. Thirdly, the impossibility is such that, the basis of the contract is destroyed by the impossibility. If the above three are established then the parties can take the benefit of discharge of the contract by impossibility.

Following can be examples of impossibility. Like commercial impracticality and temporary impossibility can be good example. Sometimes, even frustration of basic purpose of the contract can be treated as impossibility.